

TENTATIVE RULINGS for CIVIL LAW and MOTION

July 23, 2010

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. Copies of the tentative rulings will be posted at the entrance to the courtroom and on the Yolo Courts Website, at www.yolo.courts.ca.gov. If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department Fifteen: (530) 406-6941

TENTATIVE RULING

Case: Arreola v. Washington Mutual Bank, et al.

Case No. CV CV 08-3112

Hearing Date: July 23, 2010 Department Fifteen 9:00 a.m.

Request for judicial notice by California Reconveyance Company (“CRC”): The request to take notice of Exhibits 1 and 4 to the request for judicial notice filed on May 6, 2010, is **GRANTED**. (Evid. Code, § 452, subd. (c).) Because these documents are referenced in the complaint, the Court also takes notice of the matters stated in the documents. (Weil & Brown, Calif. Practice Guide: Civil Proc. Before Trial (The Rutter Group 2009) ¶¶ 7:9 and 7:275.) The request to take notice of Exhibits 2, 3, 5 and 6 to the request for judicial notice filed on May 6, 2010, is **GRANTED**. (Evid. Code, § 452, subd. (c).) However, the Court does not take notice of the matters stated in the recorded documents. (*Poseidon Development, Inc. v. Woodland Lane Estates, LLC* (2007) 152 Cal.App.4th 1106, 1117-1118.)

CRC’s motion for judgment on the pleadings: The motion is **DENIED**. The first cause of action is for unfair debt collection practices. The fact that CRC was the substitute trustee for the deed of trust and was, therefore, entitled to commence foreclosure proceedings against the plaintiffs, does not preclude a claim for unfair debt collection practices.

The complaint does not merely allege that the defendants published a notice of default or conducted a trustee’s sale. The complaint alleges that the defendants used the United States mail to collect on the note. (Complaint ¶ 13). The cases CRC cites in support of its motion – *Heinemann v. Jim Walter Homes, Inc.* (D.W.Va. 1998) 47 F.Supp.2d 716 and *Hulse v. Ocwen Fed. Bank, FSB* (D.Or. 2002) 195 F.Supp.2d 1188 – do not involve similar alleged activity. (*Wilson v. Draper & Goldberg P.L.L.C* (4th Cir. 2006) 443 F.3d 373 (recognizing that some actions that pertain to foreclosure proceedings, such as writing letters to a debtor demanding payment, may constitute debt collection).)

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **McClelland v. Chaurasia**
Case No. CV CV 08-1868

Hearing Date: **July 23, 2010** **Department Fifteen** **9:00 a.m.**

On July 19, 2010, Plaintiffs served and filed a status report showing that on June 16, 2010, they filed a motion to reopen their Bankruptcy case and to stay the proceedings concerning the real property and subject contract/loan pending the resolution of the Bankruptcy case. The hearing in the Bankruptcy matter is set for August 23, 2010.

Accordingly, this matter is **CONTINUED** on the Court's own motion to Wednesday September 22, 2010, at 9:00 a.m. in Department 15. Plaintiffs are **DIRECTED** to file a report concerning the status of their motion to re-open the Bankruptcy case by **September 15, 2010**.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice, is required.

TENTATIVE RULING

Case: **Omeeghan v. Forecast Group, L.P., et al**
Case No. CV CV 09-1456

Hearing Date: **July 23, 2010** **Department Fifteen** **9:00 a.m.**

Cross-defendant Sacramento A-1 Door's unopposed motion for determination of good faith settlement is **GRANTED**. (Code Civ. Proc., § 877.6.)

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice, is required.

TENTATIVE RULING

Case: **Rosas v. Leer Truck Accessory**
Case No. CV CV 09-2800

Hearing Date: **July 23, 2010** **Department Fifteen** **9:00 a.m.**

Defendant's motion to strike the specified punitive damages in the first amended complaint is **DENIED**. (Code Civ. Proc., § 436.) Plaintiff has pleaded sufficient facts to support an inference of fraud under Civil Code Section 3294.

Plaintiff shall file an amended complaint by **August 6, 2010**.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice, except as provided herein, is required.

TENTATIVE RULING

Case: **Twin Pines Cooperative Foundation v. Davis Area Cooperative
Housing Assoc., Inc.**

Case No. CV PO 08-3424

Hearing Date: **July 23, 2010** **Department Fifteen** **9:00 a.m.**

This matter is **CONTINUED** on the Court's own motion to Friday, August 6, 2010, at 9:00 a.m. in Department Fifteen.